

Collateral Consequences in Occupational Licenses

Economic Development and Workforce Services
Committee

Testimony by
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Take Aways

- The best occupational license for a person with a criminal record is a license that does not exist.
- Popular type reform.

Licensing Reforms

- Individual licenses
 - Repeal
 - Exemptions
- Tangential reforms
 - Collateral consequences**
 - Ban on new municipal licenses
 - Default on student loans
 - Interstate mobility
- Process reforms

Background

- Biggest labor market institution in Utah
 - Occupational licensing: 16% of workers
 - Union representation: 6% of workers
 - Minimum wage: 3% of hourly paid workers

Crime statistics

- Quoted statistic

1 in 3 people have a criminal record

<u>2014 Crime</u>	<u>Violent</u>	<u>100,000 residents</u>
• U.S.	1,197,987	375
• Utah	6,346	215

Slivinski's Research

- *Turning Shackles into Bootstraps* (2016)
Study period: 1997-2007
- States with heaviest occupational licensing burdens:
Increase in the 3-year, new-crime recidivism rate of over 9%.
- Conversely, states with lowest burdens:
Decline in that recidivism rate of nearly 2.5%.

Popular Reform

- Collateral Consequences on Occupational Licensing
 - 27 states changed test to disqualify applicants with a criminal record.
 - Including new petition-process in 12 states

Model Collateral Consequences Act

- No automatic/mandatory/permanent/blanket ban.
- Petition at any time, including before obtaining training.
- Shifts burden to board to prove:
 - Past felony or violent misdemeanor “is directly, substantially and adversely related to the state's interest in protecting public safety;”

Model Collateral Consequences Act

- Requires boards to consider 10 factors reflecting rehabilitation.
- Excludes boards from considering:
 - Non-conviction information—deferred adjudication, diversion programs or arrests not followed by convictions;
 - Sealed, dismissed, expunged or pardoned conviction;
 - Juvenile adjudication;
 - Non-violent misdemeanor; or
 - Conviction older than 3 years.*

Q & A

(Appendix)

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Institute for Justice (IJ)

- Advocate for fewer occupational licenses
 - Litigate and lobby
 - Original research *License to Work* (2017) and *At What Cost?* (2018)
- Non-profit public-interest law firm
 - Founded 1991
 - 50 attorneys in seven offices
 - Clinic at the University of Chicago law school
 - *Clayton v. Steinagel* (2012)—Utah braider case
- Six cases before U.S. Supreme Court
 - *Kelo v. New London* (2005)—public use clause in eminent domain takings.
 - *Timbs v. Indiana* (2018)—incorporating 8th Amendment's excessive fines clause against states.

Resources

- IJ's Model Act: www.tinyurl.com/IJ-ccola
- State enactments: www.tinyurl.com/IJ-ccola-Enactments
- *License to Work*: www.ij.org/report/license-work-2/
- *Shackles*: www.tinyurl.com/shackles-bootstraps

Background

- Occupational licensing has high costs:
 - Increases unemployment: 1% or 3 million jobs
 - Increases consumer prices: \$200 billion/ \$1,000 family p.a.
 - Reverse Robin Hood: Transfers wealth to higher classes
 - Privileges: Formal education over on-the-job training
 - Designed to allow: Regulatory capture
 - Promotes: Corporate welfare
 - Disproportionally: Affects disadvantaged/criminal record
 - Increases: Criminal recidivism

Background

- Licensing has few benefits to consumers over reputation:
 - “...most research does not find that licensing improves quality of public health and safety.”

Occupational Licensing: A Framework for Policymakers (2015)

Council of Economic Advisors to President Barack Obama.

- 19 studies assessing effect of occupational licensure on quality.
 - Common finding: neutral, mixed or unclear.
 - 3 studies: positive effect on quality.
 - 4 studies: negative effect on quality.

State of Occupational Licensure in Wisconsin <https://tinyurl.com/Mercatus-WI>

Conclusion

- Licensing is a High-Cost/Low-Benefit public policy

Alternative: Inverted Pyramid of Least Restrictive Regulation

Market Competition

Consumer-created Ratings and Review

Private Certification

Voluntary Bonding and Insurance

Private Civil Action

Deceptive Trade Practice Act

Mandatory Disclosures

Regulation of Process

Inspections

Mandatory Bonding &
Insurance

Registration

Government
Certification

License

Protect Consumers by Using Least Restrictive Regulation.

Consumer Concern

- Fraud
- Health & safety, cleanliness
- Damages to buyer or 3rd-parties (externalities)
- Fly-by-night providers
- Knowledge gap (Asymmetrical information)
- Government reimbursement for new medical niche services

Response

- Deceptive Trade Practice/
Mandatory Disclosures
- Inspections
- Bonding/insurance
- Registration
- Certification
- Specialty license

Individual reforms

- Many low-hanging-fruit reforms have been enacted since 2014.
- 44 bills enacted repealing licenses
 - Michigan repealed 7 regulations including auctioneers and dieticians
 - Connecticut repealed licenses for swimming-pool assemblers, shorthand reporters and itinerant vendors.
 - Arizona repealed citrus packers, yoga-teacher instructors and assayers
- Cosmetology
 - 17 states exempted hair braiders
 - Other exemptions for threaders and blow-dry artists
- Contractors
 - Utah ended requirement of 2 years of work experience

Other tangential reforms

- 11 states repealed license-suspension for default of loans.

- Ban on new municipal licenses

- Michigan, Tennessee and Wisconsin

- Interstate mobility

- Compacts

Multistate

Nurses, Doctors
Senator Cotton

- Reciprocity

State-by-state

FL-MN realtors

- Comparison

PA

- Recognition

Military families

Complete

Only CT doesn't at all

AZ

Process reforms

- Antitrust reviews
 - Mississippi, Oklahoma
- Mandate to the administrative branch
 - Louisiana
- Interim studies
 - Arkansas, Idaho, Oklahoma, Utah
- **Sunrise and Sunset Reviews**
 - Arkansas, Nebraska, Ohio
- Petition rule change and burden shift
 - Arizona, Tennessee